

PUBLIC SANCTIONS

FY 2009

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BEFORE THE STATE COMMISSION ON JUDICIAL CONDUCT

**CJC Nos. 05-0679-DI, 05-0776-DI, 06-0299-DI, 06-0439-DI, 06-0893-DI, AND
07-0056-DI**

PUBLIC REPRIMAND

**HONORABLE RICHARD W.B. "RICK" DAVIS
FORMER JUDGE, 272ND JUDICIAL DISTRICT COURT
BRYAN, BRAZOS COUNTY, TEXAS**

On or about April 20, 2006, the State Commission on Judicial Conduct ("Commission") voted to commence formal proceedings against Richard W.B. "Rick" Davis ("Respondent"), who, at the time, was judge of the 272nd Judicial District Court, in Bryan, Brazos County, Texas. The initial complaints dealt primarily with allegations that Respondent had continued to pursue a personal vendetta against local attorney Laura Cass ("Cass") and her former employer, Brazos County District Attorney Bill Turner ("Turner"), despite having been publicly reprimanded by the Commission in 2002 for engaging in similar acts of judicial misconduct. The formal proceeding was also intended to examine whether Respondent acted improperly in connection with an April 2005 grand jury that he impaneled, and its investigation of Turner, the judge's political foe.

The Office of the Texas Attorney General, acting as Special Counsel for Examiner for the Commission, filed the initial Notice of Formal Proceedings against Respondent on or about September 19, 2006. The proceedings were then abated by agreement of the parties to allow the Commission to investigate and address additional allegations of judicial misconduct involving Respondent's May 12, 2006 request for a Court of Inquiry to investigate criminal allegations against his 2005 political opponent, Brazos County First Assistant District Attorney, Shane Phelps ("Phelps"). On or about February 16, 2007, following Respondent's second appearance before the Commission in response to the new complaints, the Commission voted to add the new complaints to the already-pending formal proceedings. The Amended Notice of Formal Proceedings was served on Respondent on or about June 21, 2007. Shortly thereafter, Respondent announced he would be stepping down from the bench at the end of his term to return to private practice. On August 27, 2007, a Special Master was appointed by the Texas Supreme Court to preside over the trial in the formal proceedings. In early January 2008, Respondent formally announced his candidacy for Brazos County District Attorney and resigned from judicial office. As a result of Respondent's resignation, the Commission voted to withdraw the formal proceedings pending against him. By agreement of the parties, the complaints against Respondent went back before the Commission for informal proceedings on or about June 9, 2008.

During its meeting on October 15-17, 2008, the Commission concluded its review of the evidence concerning the allegations against Respondent. By agreement of the parties, dated May 15, 2008, the transcript and records of the 2006 Court of Inquiry described below were submitted for the Commission's consideration and have been deemed admissible as evidence in this case. After considering the evidence before it, the Commission has entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Richard W.B. Davis ("Respondent") was the judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.
2. On March 1, 2002, the Commission issued a Public Reprimand to Respondent based upon his conduct toward Brazos County District Attorney Bill Turner ("Turner"), and former Assistant District Attorney Laura Cass ("Cass"). Respondent appealed the Commission's decision and on June 10 - 11, 2002, the case was heard *de novo* by a Special Court of Review duly appointed by the Supreme Court of Texas, consisting of the Honorable Justices John Boyd, Bea Ann Smith, and Sue Walker.
3. On July 2, 2002, the Special Court of Review issued an opinion in which it affirmed the Commission's Public Reprimand and, in addition, ordered Respondent to complete eight (8) hours of mentoring and anger management training. See *In Re Davis*, 82 S.W.3d 140 (Tex. Spec. Ct. Rev. 2002).
4. Shortly after the issuance of the Special Court of Review's Opinion, Respondent issued a public apology to Cass.
5. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "extreme retaliatory actions" and "disturbing tactics and inappropriate language to respond to those who might question his decisions" constituted a willful violation of Canon 3B(4). See *In Re Davis*, 82 S.W.3d 140, 147 (Tex. Spec. Ct. Rev. 2002).

6. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "a personal vendetta to destroy the reputation" and an "inability to handle appropriately the criticism that inevitably comes to every judge" constituted a willful violation of Canons 2A and 4A(1). See *In Re Davis*, 82 S.W.3d 140, 147-148 (Tex. Spec. Ct. Rev. 2002).
7. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "us[ing] the power of his office to retaliate against someone with whom he had a personal grudge" constituted a willful violation of Article V, § 1-a of the Texas Constitution. See *In Re Davis*, 82 S.W.3d 140, 148 (Tex. Spec. Ct. Rev. 2002).
8. Based upon the Commission's March 1, 2002 Public Reprimand and the Special Court of Review's July 2, 2002 Opinion, Respondent had actual knowledge that "pursuing retaliatory actions" was not protected First Amendment speech. See *In Re Davis*, 82 S.W.3d 140, 149-150 (Tex. Spec. Ct. Rev. 2002).
9. In the 2004 primary election, Brazos County First Assistant District Attorney Shane Phelps ("Phelps") ran against Respondent. Respondent prevailed in an April 2004 runoff election.
10. During the 2004 general election, Respondent's friend and political supporter, Patrick Meece ("Meece") ran against Turner. Turner was re-elected.
11. Respondent was aware that Meece had been digging through trash dumpsters trying to find information that could be used against his political opponent, Turner. Meece had shown Respondent documents he had found and reconstructed that Meece contended could prove violations of the Texas Election Code by Turner and Respondent's political opponent, Phelps.
12. Respondent declined Meece's request for a court of inquiry, and instead advised Meece to refer the materials elsewhere.

The April 2005 Grand Jury

13. Respondent knew that the Texas Ethics Commission had dismissed Meece's complaint and that the Public Integrity Unit of the Travis County District Attorney's Office had likewise declined to take any action.
14. In April 2005, deviating from his normal practice, Respondent impaneled a grand jury using jury commissioners rather than the panel method. Respondent appointed Amanda Short ("Short"), a client of Meece's law firm, to act as the grand jury's foreperson.
15. In early August 2005, Respondent learned from Meece that he was going to present information directly to Short alleging that Turner and Phelps had violated the Texas Election Code during the 2004 election.
16. After receiving the information directly from Meece, Short asked Respondent for an extension of the grand jury's term, which was scheduled to expire at the end of September.
17. The District Attorney's Office was not informed by Short or Respondent of the request to extend the grand jury.

18. In a letter dated August 18, 2005, Respondent told Short that her request was premature, and that she could renew it at a later time. Respondent did not share this communication with the District Attorney's Office and it was not made public until November 2005.
19. On September 15, 2005, Short again contacted Respondent requesting an extension of the grand jury's term.
20. On September 15, 2005, Respondent signed a written order extending the grand jury's term for 90 days – from September 30, 2005 to December 29, 2005. Although not requested, the order also authorized the grand jury to conduct its business away from the courthouse at a location of its own choosing.
21. The District Attorney's Office was not notified that the grand jury had been extended, or that it might be meeting in a location other than the courthouse.
22. Despite authorizing the grand jury to meet away from the courthouse in any location of its choosing, Respondent did not take any steps to appoint a bailiff, make arrangements for a location, or take any other reasonable steps to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves.
23. None of the communications between Respondent and Short were filed with the Brazos County District Clerk's office until November 14, 2005, at which time only the September 15 request and order were turned over and recorded in the minutes of the court.
24. The District Attorney's Office was not included in, nor made aware of, the communications until November 2005. Although the grand jury term had been extended for 90 days, the District Attorney's Office was not notified or otherwise made aware of the grand jury's extended availability until approximately two (2) months after Respondent signed the September 15 order.
25. On or about November 30, 2005, at a meeting in Meece's office, Meece informed Respondent that Meece had made arrangements for the grand jury to meet the following day, December 1, 2005, in a conference room in the building where his law office is located.
26. Despite having been told that Meece had made arrangements for the grand jury meeting, Respondent did not question Meece's involvement in the grand jury process. Respondent did not ask any questions or take any other steps to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves.
27. Having reason to believe that the grand jury was investigating him or someone in his office, Turner sought to recuse both Respondent and the Brazos County District Attorney's Office from exercising any authority over or having any further involvement with the grand jury.
28. In a letter to Judge Olen Underwood, Presiding Judge of the 2nd Administrative Judicial District, responding to Turner's Motion to Recuse, Respondent turned over the remaining records in his possession relating to the April 2005 grand jury, to wit: Short's August 14, 2005 request for an extension and Respondent's written response placing the request in abeyance.
29. The grand jury met on December 1, 2005, despite complaints from several of the grand jurors. At that time, Short presented the full packet of information provided by Meece. The grand jurors decided to take no action against Turner.

30. Respondent's alleged involvement with a grand jury possibly investigating criminal charges against Turner and Phelps, as well as Respondent's ongoing feud against Turner and Phelps, resulted in widespread media attention and public criticism of Respondent's actions.

The Courts of Inquiry

31. Article 52.01 of the Texas Code of Criminal Procedure provides that only a district judge, acting in his capacity as a magistrate, may request the commencement of a Court of Inquiry.
32. In June 2003, Respondent requested that a Court of Inquiry be convened to investigate Turner. Judge Underwood appointed the Honorable Judge David Peeples of San Antonio to preside. The Court of Inquiry was convened in July 2003, but dismissed during the first day of hearings. Judge Peeples wrote a formal opinion cautioning Respondent that the extraordinary procedure of the Court of Inquiry "should be used with prudence and restraint."
33. Based upon the formal opinion issued by Judge Peeples, Respondent had actual knowledge that there was not sufficient evidence to investigate Turner, and that he had not exercised "prudence and restraint" in requesting the Court of Inquiry.
34. In early 2006, in response to inquiries from the Commission regarding allegations that he improperly interfered with the April 2005 grand jury, Respondent began collecting affidavits from some members of the grand jury, and others, to defend himself against the complaints. Respondent prepared several of the affidavits himself and used his court staff to obtain signatures from the witnesses, including affidavits later described by these same witnesses as "exaggerated" and inaccurate.
35. At some point, Respondent decided to use these affidavits for another purpose: to attempt to discredit his former political opponent, Phelps.
36. On May 12, 2006, Respondent submitted a written request to Judge Underwood asking that a Court of Inquiry be convened to investigate Phelps. Respondent accused Phelps of obstructing the April 2005 Grand Jury's investigation of Phelps and Turner.
37. Respondent attached twenty supporting affidavits to his May 12 request for the second Court of Inquiry. Four of those affidavits predated the alleged December 2005 grand jury obstruction. Three were included with the request solely to accuse Laura Cass of improper *ex parte* communication, and Judge Peeples of "corruption and subterfuge" and "moral cowardice." The fourth merely repeated accusations that had been dismissed by Judge Peeples in the first Court of Inquiry in 2003.
38. Judge Underwood appointed the Honorable Judge Cynthia Kent of Tyler to preside over Respondent's second Court of Inquiry, which was convened on July 5, 2006. Tyler attorney F. R. "Buck" Files, Jr. was appointed by Judge Kent to prosecute the matter.
39. After two full days of testimony and evidence, Judge Kent dismissed Respondent's second Court of Inquiry.
40. What became clear during the second Court of Inquiry is that Respondent never asked the grand jurors whether Phelps took any action to intimidate or harass them, or to otherwise hinder their investigations. Nor did he make any attempt to ascertain that the grand jurors' contact with Phelps on December 1, 2005, occurred after the grand jury had decided not to pursue any action against Turner.

41. In her written Order dated October 6, 2006, Judge Kent found that there was “no credible evidence of any misconduct or violation of law by Mr. Shane Phelps.”
42. In her oral findings, which were incorporated by reference in her written Order, Judge Kent found that “any reasonable person, judge or jury, listening to [Meece’s] testimony would believe and find that he has a political vendetta against the District Attorney’s office.”
43. Judge Kent also found that Respondent’s complaint against Phelps was based on “mistake, false information or other similar basis, indicating” a lack of probable cause to believe that Phelps had committed any offense.
44. As a direct result of Respondent’s second Court of Inquiry, the cost to Brazos County was nearly \$55,000.

RELEVANT STANDARDS

1. Article 5, §1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent violation of the rules promulgated by the Supreme Court of Texas, . . . willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Section 33.001(b) of the Texas Government Code defines “willful or persistent conduct that is clearly inconsistent with the proper performance of a judge’s duties” as including, among other things: “[a] willful violation of the Code of Judicial Conduct; or persistent or willful violation of the rules promulgated by the supreme court.”
3. Canon 2A of the Texas Code of Judicial Conduct provides that “[a] judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
4. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part, that “[a] judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge”
5. Canon 3B(5) of the Texas Code of Judicial Conduct provides that “[a] judge shall perform judicial duties without bias or prejudice.”
6. Canon 4A(1) of the Texas Code of Judicial Conduct provides, in relevant part, that “[a] judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.”
7. Canon 4A(2) of the Texas Code of Judicial Conduct provides, in relevant part, that “... [a] judge shall conduct all of the judge’s extra-judicial activities so that they do not ... interfere with the proper performance of judicial duties.”

CONCLUSIONS

The Commission concludes from the facts and evidence presented that by allowing a grand jury he had appointed to be influenced by Meece, a friend and political supporter, to seek indictments against political opponents based upon information that had already been reviewed

and rejected by more than one independent investigative agency, Respondent engaged in willful conduct that cast public discredit on the judiciary and administration of justice, damaged public confidence in the integrity and impartiality of the judiciary, and was inconsistent with the proper performance of his duties. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge. To the extent Respondent's conduct was in furtherance of the grudges and retaliation that were the subject of his prior public reprimand, it constitutes both willful and persistent misconduct.

Rather than protecting the grand jury from the external interference of someone he knew had a political score to settle, Respondent took actions that isolated the grand jury. By meeting privately with the foreperson, and then eventually extending the term of the grand jury without notifying the District Attorney's Office or any other official, Respondent deprived the grand jury of the legal advice and assistance provided by statute. Knowing that Meece had provided his materials to the foreperson making accusations against Turner and Phelps, Respondent did not provide any guidance or advice to the grand jurors, nor did he arrange for any legal advice to be provided to the grand jury in the absence of the District Attorney's Office. By authorizing the grand jury to meet outside the courthouse without appointing a bailiff, making arrangements for a location, or taking any other reasonable steps, Respondent failed to protect the integrity or secrecy of the grand jury process or the security and privacy of the jurors themselves. Respondent's willful conduct in failing to protect the grand jury process and the grand jurors was inconsistent with the proper performance of his duties, cast public discredit on the judiciary and administration of justice, and damaged public confidence in the integrity and impartiality of the judiciary. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge. With respect to Respondent's failure to protect the April 2005 Grand Jury from outside influence, the Commission concludes that Respondent has willfully and/or persistently violated Article 5, Section 1-a(6) of the Texas Constitution; Section 33.001(b)(2) of the Texas Government Code; and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct.

Respondent engaged in willful and persistent conduct when he requested a Court of Inquiry to investigate Phelps on May 12, 2006. Having actual knowledge that his previous request for a Court of Inquiry against Turner lacked "prudence and restraint," Respondent nonetheless filed his 120-page request based upon affidavits that were not credible and did not constitute probable cause. Respondent prepared several of the affidavits himself and used his court staff to obtain signatures, including affidavits later described by the witnesses as "exaggerated" and inaccurate. By using procedures only available to a district judge, Respondent used the prestige of judicial office to further his own personal grudges and political agenda. Respondent's conduct also brought public discredit to the judiciary and the administration of justice not only by publicly engaging in conduct that had already been found to be improper and unethical, but also by publishing serious and unfounded accusations against those involved in the administration of justice in the Brazos County District Attorney's Office. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge.

Despite the 2002 Public Reprimand and the published Opinion of the Special Court of Review affirming it, Respondent compounded his prior misconduct by adding additional unfounded accusations against Cass, as well as baseless attacks against Judge David Peeples, in his May 12, 2006 request for the Special Court of Inquiry. By using procedures only available to a district judge, Respondent used the prestige of judicial office to further his own personal grudges and to retaliate against those involved in his 2002 Public Reprimand and the dismissal of

his June 2003 Request for a Special Court of Inquiry. Respondent's conduct also brought public discredit to the judiciary and the administration of justice not only by publicly engaging in conduct that had already been found to be improper and unethical, but also by publishing serious and unfounded accusations against other judges and those involved in the administration of justice in the Brazos County District Attorney's Office. Respondent's conduct cast reasonable doubt on his capacity to act impartially as a judge.

With respect to his May 12, 2006 request for a Court of Inquiry and his gratuitous and baseless accusations against Cass and Judge Peeples, the Commission concludes that Respondent has willfully and/or persistently violated Article 5, Section 1-a(6) of the Texas Constitution; Section 33.001(b)(2) of the Texas Government Code; and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct.

In condemnation of the above-recited conduct that violated Article 5, §1-a(6)A of the Texas Constitution, Section 33.001(b)(2) of the Texas Government Code, and Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Richard W.B. "Rick" Davis, former judge of the 272nd Judicial District Court, Bryan, Brazos County, Texas.

Pursuant to the authority contained in Article 5, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 31st day of October, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**CJC Nos. 05-0406-DI, 05-0475-DI, 06-0471-DI,
06-0520-DI, 07-0614-DI, & 07-0701-DI**

PUBLIC REPRIMAND

**HONORABLE AMADO J. ABASCAL, III
JUDGE, 365TH JUDICIAL DISTRICT COURT*
EAGLE PASS, MAVERICK COUNTY, TEXAS**

Background Information

On December 20, 2001, Judge Amado J. Abascal, III (“Abascal”) filed as a candidate in the March 2002 Democratic Primary election (the “Primary”) for re-election to a fourth term as judge of the 365th Judicial District Court. On January 2, 2002, the last day for filing as a candidate in the Primary, a local attorney, Charles Johnson (“Johnson”), filed to run against Abascal. Abascal defeated Johnson on March 12, 2002, and went on to win re-election in November 2002, having no opponent in the General election.

A large number of potential voters in Abascal’s district included members of the Kickapoo Indian Tribe, whose financial and political interests are thought to be dependent upon the ongoing success of the Kickapoo Lucky Eagle Casino (the “Casino”) located on tribal lands just south of Eagle Pass.

In 2002, Isidro Garza, Jr. (“Isidro”) was the Tribal Administrator of the Casino. He had a long history of assisting the once-poor Kickapoo Tribe gain political and financial success, both locally and on a national level. After an unsuccessful attempt in 2000 to defeat the incumbent, Henry Bonilla, for a seat in the U.S. Congress, Isidro worked toward building a political career for his son, Timoteo Garza (“Timo”), who ran for Texas State Representative in 2002. In an effort to assist his son, Isidro reportedly spent hundreds of thousands of dollars on the campaign, most of which came from the Casino’s operating funds.

Shortly before Timo was elected state representative in November 2002, funded largely through “loans” from Isidro and the Casino, the Kickapoo Tribe elected new leaders, who, in turn, accused the ousted leaders of mismanagement and corruption. On December 7, 2004, a federal grand jury handed up indictments against several individuals involved in the Casino’s old

* The 365th Judicial District covers Maverick, Dimmit, and Zavala Counties.

regime. Among those indicted were Isidro, his wife, Martha (“Martha”), their son, Timo, and Lee Martin (“Martin”), the former general manager of the Casino.

According to the indictments, political contributions from the Kickapoo Tribal leaders, and Isidro in particular, often took the form of cash payments, usually after checks written on the Lucky Eagle Casino account were cashed at the Casino. Since state law prohibits candidates from accepting more than \$100 cash from a single individual in an election period¹, there were allegations that many of the cash payments had been pocketed by candidates without being reported, or were reported falsely in their campaign finance reports.

According to the indictments, in the weeks prior to the Primary, Isidro arranged for four payments, totaling \$30,000, to be paid to one or more unnamed state judges, paying half the sum in cash and the other half in checks cashed directly at the Casino. Once the story of the indictments became publicly known, it was reported that Abascal had disclosed in his March 2002 campaign finance report that he had received 15 separate campaign contributions of \$1,000 each. All but two of the 15 donors were employees of the Casino. All of the contributions were made in cash.

On October 27, 2005, as a direct result of having received and reported the \$15,000 in campaign donations mentioned above, Abascal was indicted by a Travis County Grand Jury for Tampering with a Governmental Record with intent to defraud or harm another (§37.10(a)(1) and (5), Texas Penal Code), a state jail felony. Shortly thereafter, Abascal was suspended from the bench, with pay, by the Commission.

In October 2006, Isidro, Martha, Timo and Martin entered into plea agreements with federal prosecutors, who agreed to drop remaining charges against them if they pleaded guilty to lesser charges. Isidro entered a plea to one count each of tax evasion and theft.

On March 30, 2007, Abascal was indicted a second time by another Travis County Grand Jury on two counts of Aggravated Perjury, a Third Degree Felony, for allegedly lying to the October 2005 Grand Jury. On April 5, 2007, the Commission amended its Order of Suspension to include the new indictment. Abascal remained suspended with pay.

At their May 2007 sentencing, Isidro, Martha, Timo and Martin suddenly renounced their plea agreements, stopped cooperating with the government, and were ordered to stand trial.

On July 12, 2007, Abascal entered a plea of guilty to the charge of Tampering with a Governmental Record without intent to Defraud or Harm, a Class A misdemeanor. Abascal also agreed to pay a \$4,000 fine and civil damages in the amount of \$15,000 to the State of Texas. In exchange for this guilty plea, the Travis County District Attorney’s Office agreed to reduce the original charge of Tampering with a Governmental Record under Section 37.10(a)(1) and (5) of the Texas Penal Code, a State Jail Felony, to the lesser-included Class A misdemeanor offense. In addition, the State agreed to dismiss the Aggravated Perjury charges.

As a result of the plea to the lesser-included charge, which did not include the intent to defraud or harm, Abascal’s conviction of a Class A misdemeanor no longer qualified as “official misconduct” or a crime of moral turpitude, and, therefore, would not result in his automatic removal from the bench. Further, as part of the agreement the parties entered into an “Agreed Judgment Under the Texas Election Code, Chapter 253” in which Abascal acknowledged committing civil violations of the Election Code and agreed to pay the state \$15,000 as a civil

¹ 253.033, Tex. Election Code. The same restriction applies to federal candidates and officeholders under 11 CFR 110.4(c).

penalty. Shortly thereafter, the Commission lifted the judge's suspension allowing Abascal to return to the bench.²

In October 2007, Isidro, Martha, Timo, and Martin were tried in the Waco federal court and convicted of scheming together to steal more than \$2 million from the Casino and the Kickapoo tribe. Isidro and Martha were also convicted of tax evasion and other related conspiracy charges. At the trial, Abascal testified that he had received two cash payments from Isidro, a \$10,000 payment on February 12, 2002 and a \$5,000 payment on March 1, 2002 respectively.

In February 2008, Isidro was sentenced to 235 months in federal prison, 3 ½ years of supervised release, and ordered to pay \$500,000 in restitution; Martha was sentenced to 24 months in federal prison, 3 ½ years of supervised release and ordered to pay \$100,000 in restitution; Timo was sentenced to 78 months in federal prison, 3 ½ years of supervised release, and ordered to pay \$250,000 in restitution; and Martin was sentenced to 60 months in federal prison and ordered to pay \$250,000 in restitution.

Proceedings Before the Commission

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Amado J. Abascal, III, Judge, Judge of the 365th Judicial District Court, Eagle Pass, Maverick County, Texas. Judge Abascal was advised by letter of the Commission's concerns and provided a written response. Judge Abascal appeared with counsel before the Commission on October 15, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Amado J. Abascal, III, was Judge of the 365th Judicial District Court in Eagle Pass, Maverick County, Texas.
2. Abascal's indictments, suspension from office, and subsequent plea agreement and conviction of a Class A misdemeanor described above generated widespread media attention.

Abascal's 2002 Primary Election Campaign

3. As of January 2, 2002, Abascal reported having a total of \$2,119.92 in his judicial campaign bank account.
4. In his testimony before the October 2005 Grand Jury, Abascal acknowledged that he did not have a lot of money on hand at the start of his 2002 campaign. Abascal testified that he thought he had approximately \$3,500 at the time.
5. Upon learning that he would have an opponent in the March 2002 Primary, Abascal determined that he would need to quickly raise a large amount of money to spend on his campaign.
6. According to witness testimony, elections in Abascal's district are won based on the amount of cash payments made to campaign workers who, in turn, block-walk, hand out push-cards, bus voters to the polls, and feed the voters before or after they vote.

² While under the first indictment and suspension, Judge Abascal was re-elected to his fifth term of office.

7. Abascal immediately hired and began making cash payments to various campaign “canvassers,” who would block walk and hand out “push cards” for his campaign in Maverick, Zavala, and Dimmit Counties.
8. Abascal also met with Isidro at the Casino to discuss obtaining the support of the Kickapoo tribe.
9. A campaign fundraising event for Abascal was organized to take place on February 7, 2002, at the Charcoal Grill Restaurant in Eagle Pass.
10. On February 6, 2002, Isidro and Martin issued Purchase Order #19662 for a check in the amount of \$10,000, to be paid to Abascal for a “Political Contribution.”
11. On February 7, 2002, Check No. 21315, in the amount of \$10,000, paid to the order of Abascal, was issued from the Kickapoo Lucky Eagle Casino Operating Fund.
12. According to the March 2007 Grand Jury testimony of Isidro and Martin, the \$10,000 check was delivered to the Charcoal Grill Restaurant on February 7, 2002, but for some undisclosed reason was never given to Abascal.
13. Soon thereafter, the check was cashed, without endorsement, by Isidro at the Casino’s “cash cage.”
14. On February 12, 2002, Martha contacted Abascal at court to confirm that Isidro would be meeting with Abascal at 9:00 p.m. that evening. During that meeting, which took place at Abascal’s home, Isidro presented Abascal with \$10,000 in cash.
15. According to his testimony before the October 2005 Grand Jury and before the Commission, Abascal informed Isidro at that meeting that he could not accept the \$10,000 unless he received the names and addresses of the individual contributors.
16. According to Abascal, he advised Isidro that it was illegal for him to accept contributions from corporations, and that it was illegal for him to accept contributions in excess of \$1,000 from an individual or a married couple.
17. According to Abascal, because Isidro assured him that the names and addresses of the contributors would be given to him, Abascal “conditionally” accepted the \$10,000 and stored the cash in an armoire located in his bedroom.
18. On March 1, 2002, Isidro and Martin issued Purchase Order #20446, for a check in the amount of \$5,000, to be paid to Abascal for a “Political Donation.” Check No. 21888, in the amount of \$5,000, paid to the order of Abascal, was issued from the Kickapoo Lucky Eagle Casino Operating Fund that same day, and was cashed, without endorsement, at the “cash cage” in the casino by Isidro on or about the same day.
19. On March 1, 2002, Isidro and Martha delivered \$5,000 in cash to Abascal at his home.
20. According to Abascal’s testimony, when he “conditionally” accepted the cash, he reminded Isidro that he needed the names and addresses of the individual contributors so that he could report the money in his campaign finance report, which was due on March 4, 2002.
21. Abascal’s testimony regarding his discussions with Isidro about the list of names was refuted by the March 2007 Grand Jury testimony of Isidro and Martha.
22. Some time after March 1, 2002 and on or before March 4, 2002, Martha telephoned Debbie Guerrero (“Debbie”), one of Abascal’s campaign volunteers, and provided fifteen (15) names and addresses from a list prepared by Martha and/or Isidro.

23. These names were to become the fifteen \$1,000 contributors reported by Abascal in his March 4th campaign finance report.
24. Debbie wrote the 15 names and addresses on a yellow legal pad, separating or identifying 10 names associated with the date “2-12-02” and 5 names with the date “3-1-02.” Debbie gave the list of names to Abascal, who used them to prepare his March 4, 2002 campaign finance report. Debbie and Abascal added the employment information for each of the names, as that information was not provided by Martha.
25. On March 4, 2002, Abascal completed, signed, and mailed the campaign finance report to the Texas Ethics Commission. In that report, he identified fifteen (15) contributions of \$1,000 each from different individuals.
26. Abascal, who identified himself as “Campaign Treasurer,” was well-acquainted with state campaign finance laws, having been an officeholder and/or candidate for election since he served as the Maverick County District Attorney starting in 1981.³
27. The judge’s report was notarized by Manuela Rodriguez, a court employee.
28. On March 7, 2002, Abascal’s campaign finance report was received in the mail by the Texas Ethics Commission.
29. During the course of their investigation into the Kickapoo Lucky Eagle Casino corruption case, federal authorities interviewed 10 of the 15 contributors identified in Abascal’s March 4, 2002 campaign finance report. According to their testimony, not one of the alleged donors had contributed \$1,000 to Abascal; however, a few of the individuals testified that they had agreed to allow Martha to use their name as a donor for a local candidate since it would not require them to actually donate any money of their own.
30. All but two of the straw donors were employees of the Casino. Several were either related to Abascal or worked on his campaign as volunteers. Many of these “donors” testified that Abascal never once mentioned the receipt of the funds or thanked them for their contribution.
31. Bank records show that Abascal did not deposit any of the cash he received from Isidro into his campaign account.
32. According to Abascal’s testimony before the October 2005 Grand Jury and before the Commission, the cash remained in an armoire until after he was provided with the list of fifteen (15) names.
33. Abascal further testified that although he may have occasionally handled the cash in order to “make change,” none of the cash was spent until after March 2, 2002.
34. Abascal’s campaign finance reports show that in the month of January 2002, he paid campaign “canvassers” a total of \$7,215 in cash; in the period covering February 1, 2002 through March 1, 2002, he paid the campaign workers a total of \$28,775 in cash; and in

³ According to the judge’s handwritten notes obtained by federal investigators, Abascal contacted the Texas Ethics Commission and reviewed the TEC website prior to the March 2002 primary. His notes include citations to provisions of the Election Code, including laws relating to voluntary compliance with expenditure limits and the effect on a non-compliant candidate. The judge also returned 4 checks received during the course of the 2002 election because the contribution amounts exceeded the limits allowed by law and/or the donors were not allowed to contribute by law. Finally, the TEC prepared an informative legal guide, which is posted on its website, as a resource for any candidate or officeholder.

the period from March 8, 2002 through March 12, 2002, he paid the workers a total of \$9,480 in cash.

35. According to Abascal's campaign finance reports, campaign workers were paid close to \$36,000 in cash between January 1, 2002 and March 1, 2002.
36. Abascal's campaign bank account records show that only \$10,300 of the funds maintained in that account were applied toward the \$28,775 of cash payments made to campaign workers in the February 1, 2002 to March 1, 2002 reporting period.
37. As a result, according to Abascal's own records and testimony, prior to March 2, 2002, campaign workers were paid nearly \$26,000 in cash from a source of funds other than the contributions maintained in his campaign bank account.
38. Moreover, according to Abascal's testimony, that source of funds did not include the \$15,000 in cash he had received from Isidro.
39. The judge went on to testify that the source of funds used to pay the campaign workers was from cash accumulated over time from gifts from family members and other savings, which cash he maintained in a fire safe located in his home.
40. Abascal was unable to produce any records verifying the amount of cash maintained in the fire safe.
41. This private source of funds, which Abascal testified he had loaned to his own campaign, was not disclosed during the judge's October 2005 Grand Jury testimony and was never reported in Abascal's campaign finance reports as required by law.⁴
42. Abascal's testimony before the Commission regarding the availability of personal funds to support his campaign was at odds with the March 2007 Grand Jury testimony of Luis Minton ("Minton"), the judge's campaign manager. When asked about Abascal's campaign's finances, Minton recalled that when he approached the judge with the idea of buying television advertising, Abascal balked at the expense, telling Minton that he simply did not have enough money, approximately \$5,000, to cover the publicity that they had talked about.
43. According to Abascal's campaign bank account records and campaign finance reports, he received a total of \$11,450 in contributions between January 1, 2002 and January 31, 2002, and spent a total of \$12,486.22 during the same period; he received a total of \$42,468.72 in contributions between February 1, 2002 and March 1, 2002, and spent a total of \$43,845.72 during the same period.
44. Although the sum of \$42,468.72 in contributions reported in Abascal's March 4, 2002 campaign finance report included the \$15,000 in cash contributions received from Isidro, Abascal testified that he did not spend that cash until after he received the list of names and addresses on or after March 2, 2002.
45. The \$43,845.72 in reported expenditures for the reporting period covering February 1, 2002 through March 1, 2002, exceeded the amount of funds maintained in Abascal's campaign account during this period by just under \$15,000.
46. Additionally, although he reported paying campaign workers a total of \$9,480 in cash between March 2, 2002 and March 12, 2002, and testified that he spent the \$15,000 in

⁴ Sections 254.001 ("Recordkeeping Required") and 254.031 ("General Contents of Reports") of the Texas Election Code; 1 TAC 20.63 ("Reporting the Use and Reimbursement of Personal Funds").

cash he received from Isidro after March 2, 2002, Abascal was unable to account for the remaining \$5,000 in cash. Abascal acknowledged that he failed to report the balance as an expenditure or as cash on hand, as required by law.⁵

47. Abascal has never repaid himself any amount of the personal funds he loaned to his 2002 campaign.

RELEVANT STANDARDS

1. Article 5, §1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent violation of the rules promulgated by the Supreme Court of Texas, . . . willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 2A of the Texas Code of Judicial Conduct provides that “[a] judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
3. Section 37.10(a)(1) of the Texas Penal Code provides that “[a] person commits an offense if he: knowingly makes a false entry in, or false alteration of, a governmental record.”
4. Section 37.10(a)(5) of the Texas Penal Code provides that “[a] person commits an offense if he: makes, presents, or uses a governmental record with knowledge of its falsity.”
5. Section 253.033 of the Texas Election Code provides that “a candidate may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100.”
6. Section 254.001(a) of the Texas Election Code provides that “each candidate and each officeholder shall maintain a record of all reportable activity.”
7. Section 254.031 of the Texas Election Code provides that each report filed under this chapter must include: detailed information about political contributions accepted by the campaign, loans made to the campaign, and expenditures made on behalf of the candidate during the campaign.
8. Title 1, Part 2, Section 20.63 of the Texas Administrative Code requires that a candidate report any campaign expenditures from personal funds.
9. Canon 5(4) of the Texas Code of Judicial Conduct provides, in relevant part, that “. . . [a] judge . . . subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the “Act”), shall not knowingly commit an act for which he or she knows the Act imposes a penalty.”

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Abascal willfully and persistently violated the Texas Election Code, the Texas Penal Code, as well as Canons 2A and 5(4) of the Texas Code of Judicial Conduct, during the March 2002 Primary Election by (a) accepting a \$15,000 contribution from a single source, Isidro Garza; (b) accepting

⁵ Sections 254.001 (“Recordkeeping Required”) and 254.031 (“General Contents of Reports”) of the Texas Election Code; 1 TAC 20.63 (“Reporting the Use and Reimbursement of Personal Funds”).

\$15,000 in cash from either a single source or \$1,000 in cash from fifteen (15) individuals; (c) failing to report the alleged loan of nearly \$26,000 in personal funds to his campaign; (d) failing to report the balance of approximately \$5,000 allegedly left over from the \$15,000 cash contribution received from Isidro. Moreover, by pleading guilty to the Class A misdemeanor of Tampering with a Governmental Docket, Judge Abascal acknowledged that he knowingly violated the law. Such conduct by a judicial officer was clearly inconsistent with the proper performance of his duties, and the media attention surrounding Judge Abascal's indictments and his subsequent plea agreement cast public discredit upon the judiciary and the administration of justice, in violation of Article 5, Section 1-a(6) of the Texas Constitution.

In condemnation of the above-recited conduct that violated Article 5, §1-a(6)A of the Texas Constitution, the Texas Penal Code, the Texas Election Code, and Canons 2A and 5(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Amado Abascal, Judge of the 365th Judicial District Court, Eagle Pass, Maverick County, Texas.

Pursuant to the authority contained in Article 5, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 18th day of December, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 08-0474-JP

PUBLIC ADMONITION

**HONORABLE GEORGE BOYETT
JUSTICE OF THE PEACE, PRECINCT 3
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable George Boyett, Justice of the Peace, Precinct 3, College Station, Brazos County, Texas. Judge Boyett was advised by letter of the Commission's concerns and provided written responses. Judge Boyett appeared before the Commission on December 4, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, Judge George Boyett was Justice of the Peace for Precinct 3, College Station, Brazos County, Texas.
2. On January 17, 2008, while driving in College Station, Judge Boyett was cut off by a vehicle driven by a Texas A&M University student (the "student"), who made an improper lane change. The student's action caused Judge Boyett's vehicle to run off the road.
3. Although there was no damage to his car, Judge Boyett was upset by the incident and decided to follow the student.
4. According to Judge Boyett, his intent was merely to have a discussion with the student, in his role as a private citizen, about her unsafe driving.
5. Judge Boyett followed the student several blocks to her apartment complex, waited for her to park and exit her vehicle, then pulled up next to her in his car.
6. Through his car window, Judge Boyett began speaking to the student about the incident, asking if she was aware that she had forced him off the roadway.
7. Judge Boyett then informed the student that he was a judge, displayed a badge containing his name and judicial title as he handed her his business card, and requested that the student appear in his court the following day to continue the discussion.

8. In his testimony before the Commission, Judge Boyett expressed no opinion as to whether the student may have believed that she was not free to decline the judge's request to appear in his court.
9. When the student and her father appeared in Judge Boyett's court the next day, the court bailiff escorted them into the courtroom where the judge was sitting on the bench wearing his judicial robes.
10. The bailiff immediately took the student's driver's license and handed it to Judge Boyett, who copied it on a printer that was located on his bench. The student and her father were directed to sit at counsel table while the judge remained on the bench.
11. Judge Boyett testified that his intent was to meet with the student for the purpose of "admonishing" and/or "disciplining" her for her conduct the day before and to ensure that she understood the nature of her infraction.
12. According to Judge Boyett, because the student's father began arguing with him and questioning his authority to order the student to appear in court, he became annoyed and discussed having the bailiff issue a traffic citation to the student for making an improper lane change.
13. At the judge's direction, the citation was issued out of another judge's precinct since that was where the alleged traffic violation had occurred and because the judge was a fact witness in the case.
14. Judge Boyett testified about a similar incident in which he had followed a college student who had allegedly "spun out" in front of him, causing gravel to hit his windshield.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
2. Canon 2B of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others."
3. Canon 3B(4) of the Texas Code of Judicial Conduct states: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in his official capacity and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control."

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Boyett's actions toward the student, which included (a) following the student to her apartment complex, (b) identifying himself as a judge, (c) requesting that she appear in his court, (d) admonishing the student from the bench while wearing judicial robes even though no case was pending before him, and (e) directing the bailiff to issue a citation to the student after becoming annoyed with the argumentative behavior of the student's father, were not in compliance with the law, failed to promote public confidence in the integrity and impartiality of the judiciary, improperly lent the prestige of judicial office to advance the judge's private interests, and demonstrated a lack of

patience, dignity or courtesy expected of a judicial officer, in willful violation of Canons 2A, 2B, and 3B(4) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 2B and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable George Boyett, Justice of the Peace, Precinct 3, College Station, Brazos County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 18th day of December, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 08-0687-AP

PUBLIC ADMONITION

**HONORABLE TOM GRAY
CHIEF JUSTICE, 10TH COURT OF APPEALS
WACO, MCLENNAN COUNTY, TEXAS**

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Tom Gray, Chief Justice, 10th Court of Appeals, Waco, McLennan County, Texas. Justice Gray was advised by letter of the Commission's concerns and provided written responses. Justice Gray appeared with counsel before the Commission on August 13, 2008, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

BACKGROUND INFORMATION

In 2007, the Commission received and investigated numerous complaints relating to the vitriolic language contained in several dissenting opinions written by Justice Gray, which opinions contained unprofessional personal attacks against the judge's colleagues on the bench, Justices Bill Vance and Felipe Reyna, and against certain litigants, such as Larry Kelley, involved in cases before the Court. The increasingly acerbic opinions of Justice Gray became media fodder and were the subject of growing criticism and ridicule in editorials, on internet blogs, and at judicial conferences. Although the negative media coverage and denigration among certain segments of the legal community likely had the effect of diminishing public confidence in the integrity and impartiality of the judiciary and cast discredit on the administration of justice, Justice Gray acknowledged during the course of the investigation that he appreciated the problems caused by the tone of his dissenting opinions and had taken appropriate corrective measures to avoid engaging in that conduct in the future. Additionally, the Commission determined, in deference to the principle of judicial independence, that Justice Gray should not be disciplined for the content of his dissents.

In the course of the investigation, however, an additional complaint was received that made it evident that the internal strife within the 10th Court of Appeals, and in particular the discord between Justice Gray and his colleagues, needed to be examined and addressed due to the detrimental effect it was having on court staff.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Tom Gray was Chief Justice, 10th Court of Appeals, Waco, McLennan County, Texas.
2. In March 2007, Justice Felipe Reyna introduced Justice Gray as the keynote speaker at a fundraiser for the Republican Club of Somervell County in Glen Rose, Texas.
3. At the conclusion of his introduction to the approximately sixty (60) Republicans attending the fundraiser, Justice Reyna told the group, "Please join me in welcoming my good friend, Chief Justice Tom Gray," or words to that effect.
4. Justice Gray began his remarks to the audience by thanking Justice Reyna for the introduction, but went on to state, "Really, we are not friends. He's never been in my home. I've never been in his home. And furthermore, every time there's a close vote on the Court, he always votes with Bill Vance," or words to that effect.
5. Later that evening, several attendees spoke to Justice Reyna, expressing displeasure with and apologizing for Justice Gray's comments.
6. Somervell County is one of 18 counties within the jurisdiction of the 10th Court of Appeals.
7. Both Justice Reyna and Justice Gray are Republicans; Justice Bill Vance is a Democrat.
8. Thereafter, Justice Gray initiated a "whisper campaign" against Justice Reyna by criticizing him to Republican Party leaders in the counties located within the Court's jurisdiction.
9. Justice Gray attended Republican lunches and dinners and told party leaders "somebody needs to talk to Felipe. He's not being a good Republican," and that Justice Reyna "always votes with a liberal Democrat, [Justice] Bill Vance," or words to that effect.
10. In his response to the Commission's inquiry regarding this issue, Justice Gray said that after Justice Reyna was elected, people attending political events would ask Justice Gray about specific dissents Justice Gray had issued criticizing Justice Reyna, and Justice Gray was simply answering their questions.
11. According to a security tape obtained during the course of the investigation, on or about June 16, 2008, Justice Gray unlocked and entered the private offices of Justice Vance without permission.
12. In his appearance before the Commission, Justice Gray defended the unauthorized entry of Justice Vance's private offices by explaining that he was searching for a file. Justice Gray acknowledged, however, that after determining that the file was not in Justice Vance's office, he reviewed other papers located on Justice Vance's desk.
13. Justice Gray further testified that he has unlocked and entered the private offices of both Justice Vance and Justice Reyna in the past to look for files while the other justices were not present and had not given their permission.

14. Following these incidents, Justice Gray never informed his fellow judges of his entry into their offices.
15. Both Justice Vance and Justice Reyna testified that they would never enter Justice Gray's private offices without permission.
16. Justice Vance and Justice Reyna further testified that they would not have given Justice Gray permission to enter their private offices when no one else was present.
17. Justice Vance and Justice Reyna also testified about instances when Justice Gray has treated court staff in a sarcastic, intimidating and demeaning manner, which conduct also included angry outbursts and personal attacks. Statements implying that the chief clerk would be out of a job after January 1, 2009, and efforts at other times to convince the other justices to vote in favor of firing the chief clerk and the accountant were also common. Such mistreatment was sufficient to reduce some staff members to tears and has contributed to extremely low employee morale at the Court.
18. Justice Gray advised the Commission that since no one has complained to him directly about his treatment of court staff, he was unable to respond to the allegations.
19. Justice Gray further explained that he has told the chief clerk and others that things would be different after January 1, 2009, and that he was referring to the tension that he would no longer experience after Justice Vance retired from the bench and Justice Rex Davis assumed office.
20. Justice Gray denied that he intimated or suggested that anyone's job was in jeopardy.

RELEVANT STANDARDS

1. Canon 2B of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall not allow any relationship to influence judicial conduct or judgment."
2. Canon 3B(4) of the Texas Code of Judicial Conduct states in pertinent part: "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in his official capacity[.]"

CONCLUSION

The Commission concludes, based on the facts and evidence before it, that Justice Gray allowed his acrimonious relationship with Justices Vance and Reyna to improperly influence his conduct and judgment, and in the process, failed to treat those with whom he interacted in an official capacity, including court personnel, in a patient, dignified and courteous manner. The Commission concludes that Justice Gray's conduct constituted willful and/or persistent violations of Canons 2B and 3B(4) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2B and 3B(4) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Tom Gray, Chief Justice, 10th Court of Appeals, Waco, McLennan County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 18th day of December, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



PLEASE NOTE THAT THE FOLLOWING PUBLIC WARNING ISSUED AGAINST HONORABLE BRUCE PRIDDY WAS UPHELD ON APPEAL BY THE SPECIAL COURT OF REVIEW BY OPINION ISSUED MAY 18, 2009. THE SPECIAL COURT'S OPINION CAN BE VIEWED IN ITS ENTIRETY ON THIS WEBSITE LISTED UNDER DISCIPLINARY ACTIONS, SPECIAL COURT OF REVIEW OPINIONS.



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 07-0906-DI & 08-0659-DI

PUBLIC WARNING

**HONORABLE BRUCE PRIDDY
JUDGE, 116TH JUDICIAL DISTRICT COURT
DALLAS, DALLAS COUNTY, TEXAS**

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Bruce Priddy, Judge of the 116th Judicial District Court in Dallas, Dallas County, Texas. When asked to respond to the Commission's concerns, Judge Priddy repeatedly failed to do so. When ordered through a subpoena to appear and respond to the Commission's concerns, Judge Priddy complied with

those orders. Judge Priddy appeared before the Commission on June 18, 2008 and October 16, 2008, and gave testimony. At the conclusion of the October 16, 2008 hearing, Judge Priddy was ordered to provide a written response to an inquiry requesting additional information that was initially sent to him following his June 18, 2008 appearance. Although he agreed to file the written response by October 31, 2008, Judge Priddy failed to do so. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Bruce Priddy was Judge of the 116th Judicial District Court in Dallas, Dallas County, Texas, having assumed office on or about January 1, 2007.

CJC No. 07-0906-DI

2. On or about April 24, 2007, the Office of the Texas Attorney General (“OAG”), acting on behalf of the Texas Ethics Commission (“TEC”), filed a lawsuit in Travis County against Judge Priddy to recover delinquent civil penalties assessed against the judge by the TEC in connection with his failure to file, or timely file, statutorily required campaign finance reports while a candidate for judicial office.
3. On or about June 13, 2007, a default judgment was entered against Judge Priddy in the total amount of \$38,000.00, representing \$30,500.00 in civil penalties for the campaign finance violations and \$7,500 in attorney’s fees.
4. On or about August 27, 2007, Judge Priddy filed a notice of appeal from the final judgment entered on June 13, 2007.
5. On or about October 24, 2007, the OAG, again acting on behalf of the TEC, filed a second lawsuit in Travis County against Judge Priddy to recover delinquent civil penalties assessed against the judge by the TEC in connection with his failure to file, or timely file, additional statutorily required campaign finance reports as an officeholder.
6. After filing an answer to the second lawsuit, Judge Priddy paid the amount of civil penalties imposed against him that were the basis of that action.
7. Judge Priddy’s campaign finance violations and the enforcement actions taken against him by the OAG received considerable media attention.

CJC No. 08-0659-DI

8. On or about August 16, 2007, Judge Priddy received notice that a complaint had been filed against him (CJC No. 07-0906-DI), and was asked to file a written response to the Commission’s inquiry regarding the above-referenced matters.
9. Judge Priddy failed to respond to the Commission’s inquiry.
10. On or about February 18, 2008, Judge Priddy accepted service of a subpoena *duces tecum* issued by the Chair of the Commission wherein the judge was ordered to file a written response to the Commission’s inquiry on or before February 29, 2008.
11. Judge Priddy failed to respond to the subpoena.
12. On or about April 16, 2008, the Commission initiated a new complaint (CJC No. 08-0659-DI) against Judge Priddy as a result of his failure to cooperate with the Commission’s investigation of CJC No. 07-0906-DI.

13. Judge Priddy was also ordered to appear before the Commission at its June 2008 meeting and provide testimony concerning the two complaints.
14. On June 18, 2008, Judge Priddy appeared and testified before the Commission.
15. In his testimony before the Commission, Judge Priddy stated that his failure to timely file campaign finance reports with the TEC was a mistake due to his misunderstanding of the filing requirements.
16. Judge Priddy testified that he had received the Commission's inquiry in August 2007, but decided not to respond in writing, citing undisclosed "procedural reasons."
17. Judge Priddy acknowledged that by failing to respond to the Commission's inquiry, he had made "a small problem a lot worse."
18. Based on Judge Priddy's testimony, the Commission voted to table the matters in order to obtain additional information not previously requested from the judge.
19. On or about June 30, 2008, the Commission sent Judge Priddy additional written questions and requested a prompt, thorough and candid response to its inquiry.
20. Again, Judge Priddy failed to respond to the Commission's written inquiry.
21. On or about August 26, 2008, Judge Priddy was ordered by the Chair of the Commission to file a written response to the Commission's inquiry and to appear and testify before the Commission at its October 2008 meeting.
22. On October 16, 2008, Judge Priddy appeared and testified before the Commission.
23. In his testimony before the Commission, Judge Priddy acknowledged that he had received the Commission's second inquiry, but declined to respond due to undisclosed procedural reasons.
24. When asked by the Chair if he would cooperate with the Commission and respond in writing to the second inquiry within two (2) weeks, Judge Priddy represented that he would comply with the Commission's request and would not require another subpoena to compel his cooperation.
25. Based on Judge Priddy's representations and agreement at that hearing, the Commission voted to table the matters in order to allow the judge the opportunity to provide the additional written information previously requested by the Commission.
26. Judge Priddy failed to provide the additional information as agreed.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution states that a judge may be disciplined for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Section 33.001(b) of the Texas Government Code defines "willful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" as including, among other things: "failure to cooperate with the commission."
3. Canon 2A of the Texas Code of Judicial Conduct provides that "[a] judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

4. Canon 4I(2) of the Texas Code of Judicial Conduct provides that “[a] judge shall file financial reports and other reports as required by law.”
5. Canon 5(4) of the Texas Code of Judicial Conduct provides that “[a] judge... subject to the Judicial Campaign Fairness Act...shall not knowingly commit an act for which he or she knows the Act imposes a penalty...”

CONCLUSIONS

Based on the facts and evidence before it, the Commission concludes that by ignoring the Commission’s numerous requests and orders that he respond to its inquiries, Judge Priddy engaged in willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary and administration of justice in violation of Article V, §1-a(6)A of the Texas Constitution and Section 33.001(b)(5) of the Texas Government Code.

In addition, the Commission concludes that Judge Priddy knowingly failed to timely file campaign finance reports as required by law, in willful violation of Canons 2A, 4I(2) and 5(4) of the Texas Code of Judicial Conduct. Judge Priddy’s failure to comply with the Judicial Campaign Fairness Act, which resulted in civil penalties and enforcement actions to collect those penalties, also constituted willful and persistent conduct that is clearly inconsistent with the proper performance of his duties and casts public discredit upon the judiciary and administration of justice in violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the above-recited conduct that violated Article V, §1-a(6)A of the Texas Constitution, Section 33.001(b)(4) of the Texas Government Code, and Canons 2A, 4I(2), and 5(4) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC WARNING** to the Honorable Bruce Priddy, Judge of the 116th Judicial District Court, Dallas, Dallas County, Texas.

Pursuant to the authority contained in Article 5, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 18th day of December, 2008.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 08-0760-MU

PUBLIC WARNING

**HONORABLE WILLIAM V. JAMES
MUNICIPAL COURT JUDGE
BRAZORIA, BRAZORIA COUNTY, TEXAS**

During its meeting on December 2-5, 2008, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable William V. James, Municipal Court Judge for the City of Brazoria, in Brazoria County, Texas. Judge James was advised by letter of the Commission's concerns and provided a written response. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable William V. James was Municipal Court Judge for the City of Brazoria, in Brazoria County, Texas.
2. On or about January 2, 2008, Complainant's 16 year-old son received a citation for failure to display a valid driver's license.
3. On or about January 28, 2008, Complainant and his son initially appeared before Judge James to enter a plea in the case.
4. Court records provided by Judge James indicate that the defendant entered a plea of "not guilty" and requested a jury trial. Thereafter, a pre-trial hearing was scheduled for March 19, 2008.
5. On or about February 14, 2008, Judge James sent a letter to the defendant in which the judge recites that the defendant had initially entered a plea of "guilty" at his January 28th appearance. Judge James further explains that he "became upset" when the defendant changed his plea to "not guilty" at his father's instruction. The judge added, "I would have been upset if I were you."

6. Judge James went on to inform the defendant that, “[y]our guardian stated you wanted a jury trial which at the time I did not handle correctly. After consulting a judge in a higher court my decision is that your plea of guilty will stand as your plead [*sic*]. Your fine is now \$210 payable to the City of Brazoria.” In the letter, Judge James provides for an appeal bond in the amount of \$420.
7. Other than the February 14, 2008 letter, Judge James provided no record indicating that a written judgment had been entered in the case.
8. In his written response to the Commission’s inquiry, Judge James explained that he wrote the letter because he had been thoroughly frustrated by Complainant’s rude and disrespectful conduct at the January 28, 2008 appearance.
9. The records show that the defendant appealed the case, which was subsequently dismissed.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall comply with the law”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge . . . shall maintain professional competence in [the law].”

CONCLUSION

The Commission finds that Judge James failed to comply with the law and failed to maintain professional competence in the law when he (i) failed to conduct a trial prior to finding the traffic defendant guilty and assessing a fine against him, (ii) changed the defendant’s plea from “not guilty” to “guilty,” and (iii) failed to enter a written judgment reflecting the decision in the case. The Commission finds that the judge’s conduct in this case constituted violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC WARNING** to the Honorable William V. James, Municipal Court Judge for the City of Brazoria, in Brazoria County, Texas.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING** by the State Commission on Judicial Conduct.

The Commission takes this action in a continuing effort to protect public confidence in the judicial system, and to assist the state judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Code of Judicial Conduct.

Issued this **12th** day of **February**, 2009.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 07-1056-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE TONY TORRES
JUSTICE OF THE PEACE, PRECINCT 2, PLACE 2
BROWNSVILLE, CAMERON COUNTY, TEXAS**

During its meeting on February 11 - 13, 2009, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Tony Torres, Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas. Judge Torres was advised by letter of the Commission's concerns and provided a written response. Judge Torres appeared with counsel before the Commission on February 11, 2009, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Tony Torres was Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas.
2. On December 4, 2006, Antonio Abundiz III ("Antonio") and his mother, Elvira Abundiz ("Elvira"), filed a small claims suit against Teodoro Sanchez ("Sanchez") for damages to Elvira's car after Antonio and Sanchez collided in an automobile accident.
3. On January 15, 2007, Antonio died in an unrelated automobile collision. Despite her son's death, Elvira continued to pursue the small claims action against Sanchez.
4. On January 25, 2007, Judge Torres set the small claims suit for trial for 2:00 p.m. on February 20, 2007.
5. On February 20, 2007, at 12:59 p.m., Judge Torres received a letter via fax from Sandra Gutierrez, secretary for local attorney Gilberto Hinojosa ("Hinojosa"), asking that the trial be reset because Hinojosa was unable to attend.

6. No motion for continuance was included with the fax, nor had Hinojosa filed an appearance on Sanchez's behalf.
7. Although Elvira appeared for trial at 2:00 p.m. as scheduled, Judge Torres told her that a continuance had been granted and the trial was reset to April 17, 2007.
8. On April 17, 2007, Elvira again appeared before Judge Torres. After neither Sanchez nor Hinojosa appeared, Judge Torres entered a default judgment against Sanchez in the amount of \$1,240. The default judgment was signed on April 18, 2007.
9. According to Judge Torres' testimony before the Commission, the deadline to file an appeal or grant a new trial in this case was April 28, 2007, after which time the court lost jurisdiction.
10. On May 11, 2007, more than three weeks after Judge Torres signed the default judgment, Hinojosa filed a Motion to Set Aside Default Judgment. Judge Torres testified that he did sign an Order Setting Hearing at this time, but it was never sent to the parties and did not contain a new trial date.
11. On June 11, 2007, however, without notice or a hearing, Judge Torres' clerk affixed the judge's signature to an Order Setting Hearing, which scheduled Elvira's case for trial on July 27, 2007. According to Judge Torres, the clerk used his signature stamp in this instance without his permission and outside his presence.
12. On July 11, 2007, at Elvira's request, the matter was reset, again by Judge Torres' clerk, for July 23, 2007.
13. On July 23, 2007, Judge Torres conducted a trial "as if a new trial had been granted." Elvira, Sanchez and his attorney, Hinojosa, were present.
14. Judge Torres testified that he did not review the case file carefully and, therefore, was not aware at the time of the trial that he had not granted a new trial or that the Motion to Set Aside Default Judgment had been filed after the court had lost jurisdiction.
15. On July 24, 2007, Judge Torres signed a Take Nothing Judgment in favor of Elvira, who had been prevented from testifying at trial about the car wreck or the damage to her vehicle.
16. In August, 2000, the Commission issued a *Public Admonition* to Judge Torres for violating Article V, § 1-a(6) of the Texas Constitution, and Canons 2B and 5(3) [now 5(2)] of the Texas Code of Judicial Conduct, by using his name, judicial position, likeness and supporting statements in well-publicized political advertisements for re-election of the Cameron County sheriff.
17. In June, 1996, the Commission issued a *Public Admonition* to Judge Torres for violating Canon 3B(8), by dismissing a small claims case with prejudice, without any cause for such a ruling, thereby denying the plaintiff's right to ever have her case heard and decided on the merits.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law . . ."
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge . . . shall maintain professional competence in [the law]."

CONCLUSIONS

The Commission concludes from the facts and evidence presented that Judge Torres failed to follow the law and failed to maintain professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, when he (a) failed to provide notice to Elvira or hold a hearing before ruling on Hinojosa's untimely Motion to Set Aside Default Judgment; (b) failed to expressly grant or deny Hinojosa's Motion to Set Aside Default Judgment, but instead simply set the case for trial "as if a new trial had been granted;" (c) failed to review the case file prior to conducting the July 23, 2007, trial in the case; (d) conducted the July 23, 2007 trial in the case after the court had lost jurisdiction over the matter; (e) entered a second judgment in the case after the default judgment in favor of Elvira became final; and (f) prevented Elvira from testifying about the car wreck of the damage to her vehicle. In reaching this decision, the Commission has also taken into account the fact that Judge Torres has received two prior public sanctions, one of which involved similar mishandling of a small claims case.

In condemnation of the above-recited conduct that violated Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Tony Torres, Justice of the Peace for Precinct 2, Place 2, in Brownsville, Cameron County, Texas.

Pursuant to the order, Judge Torres must obtain **six (6) hours** of instruction with a mentor in addition to his required judicial education. In particular, the Commission directs that Judge Torres receive instruction in the areas of small claims suits and related provisions in the Texas Government Code and the Texas Rules of Civil Procedure.

Judge Torres shall complete the additional **six (6) hours** of instruction recited above within **sixty (60) days** from the date of written notification of the assignment of a mentor. It is Judge Torres's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **six (6) hours** of instruction described herein, Judge Torres shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 9th day of March, 2009.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 08-0792-JP, 08-0820-JP, 08-0821-JP AND 08-0822-JP

PUBLIC WARNING

**HONORABLE GUSTAVO GARZA
JUSTICE OF THE PEACE, PRECINCT 6, PLACE 1
LOS FRESNOS, CAMERON COUNTY, TEXAS**

During its meeting on February 11-13, 2009, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Gustavo Garza, Justice of the Peace, Precinct 6, Place 1, in Los Fresnos, Cameron County, Texas. Judge Garza was advised by letter of the Commission's concerns and provided a written response. Judge Garza appeared with counsel before the Commission on February 12, 2009, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Gustavo Garza was Justice of the Peace for Precinct 6, Place 1, in Los Fresnos, Cameron County, Texas.
2. Judge Garza is also a licensed attorney who has practiced law for more than twenty-six (26) years.
3. On or about January 22, 2008, J.V., a 14-year-old student, was charged by the Los Fresnos Consolidated Independent School District (the "School District") with Failure to Attend School.
4. According to court records provided to the Commission by Judge Garza, the School District also filed a separate charge against J.V.'s mother and stepfather for the offense of Contributing to J.V.'s Non-attendance; however, the records provided by the judge reflect that court action was taken only in J.V.'s case.
5. According to compulsory attendance notices provided by the School District before charges were filed, J.V. and her parents were warned that they "will be summoned before a justice of the peace for violation of Compulsory Attendance Law where sanctions may involve court costs, fines and/or community service."

6. The attendance notices further provided that “[t]he penalties for violating [the Texas Compulsory Attendance Law] are:
 - a. Court Costs, plus
 - b. Up to \$500 fine
 - c. Parent may be required to attend school all day with child
 - d. Student may be required to work on community service hours
 - e. Student & parent may be court ordered to attend counseling/parent classes.”
7. On or about February 15, 2008, J.V. appeared before Judge Garza with her mother. J.V.’s stepfather, who did not approach the bench, remained seated in the courtroom.
8. According to a Court Proceeding Report dated February 15, 2008 (the “February 15 Report”), which was completed by a member of court staff, both J.V. and her mother entered a plea of “no contest” at this time.
9. The court’s docket sheet, which was completed by Judge Garza, also reflected that J.V. entered a plea of “no contest” at this appearance.
10. According to both the February 15 Report and Judge Garza’s docket sheet, J.V.’s case was reset to March 19, 2008.
11. The February 15 Report, which also contained information regarding “Sanctions as per T.E.C. 25.094,” further instructed J.V. to comply with the requirement to “attend school without unexcused absences or tardies for the school year as appropriate.”
12. Judge Garza testified before the Commission that he granted deferred disposition to J.V.; however, no evidence was provided that the judge entered any written order of deferred disposition, probation, or other judgment in this matter.
13. Although J.V. and her mother signed the February 15 Report, Judge Garza did not.
14. At least one record provided by Judge Garza indicated that J.V.’s mother failed to appear on March 19, 2008, and that a warrant was prepared for her arrest. No evidence was provided as to whether the arrest warrant was ever executed.
15. On or about April 9, 2008, J.V. appeared before Judge Garza with her stepfather.
16. According to the Court Proceeding Report dated April 9, 2008 (the “April 9 Report”), both J.V. and her stepfather entered a plea of “guilty” at this time; however, no such plea was reflected on Judge Garza’s docket sheet.
17. According to the stepfather, because J.V. was “not in compliance,” Judge Garza told him “I need \$500 or you paddle her.”
18. The stepfather went on to explain that none of the sanctions described in the attendance notices or the Court Proceeding Reports was discussed with him, and no inquiry was made as to whether he could afford to pay the \$500.00.
19. Because he could not afford to pay \$500.00, the stepfather stated that he believed he had no choice but to paddle J.V., which he reluctantly did.
20. According to Judge Garza’s docket sheet, the stepfather “opted discipline.”
21. At the bench, a large wooden paddle was made available to the stepfather.
22. When the stepfather asked how many times he needed to strike J.V., Judge Garza responded, “5 times.”

23. According to the stepfather, after he completed the paddling, Judge Garza admonished him for not striking J.V. hard enough.
24. The stepfather described the paddling, which took place in open court, as a degrading and humiliating experience.
25. The April 9 Report, which was signed by J.V. and her stepfather, but not the court, contained the following hand-written remarks: "B.O.E. 5X" and "Step Dad (X Soft)."
26. According to Judge Garza, the remarks "B.O.E. 5X" and "Step Dad (X Soft)" were written by a member of court staff to indicate that J.V.'s stepfather used the paddle ("B.O.E." or "Board of Education") five times, but did so very softly.
27. Although J.V.'s fine had been discharged through the paddling by her stepfather, J.V.'s case remained pending with conditions for compliance.
28. Both the April 9 Report and the judge's docket sheet entry for April 9, 2008, reflected that the case was reset to June 4, 2008.
29. A final Court Proceeding Report dated June 4, 2008 (the "June 4 Report"), which was signed by J.V. and her mother, contained the hand-written comments, "100% Compliance" and "Pick Up Grades."
30. Both the June 4 Report and the judge's docket entry for June 4, 2008, indicated that the case was reset to September 25, 2008, more than 180 days past J.V.'s plea of "no contest" on February 15, 2008 and several weeks into the new school year.
31. No assessment of any fine or court costs was reflected in any of the Court Proceeding Reports, on Judge Garza's docket sheet, or in any other record provided to the Commission relating to J.V.'s case. No evidence was provided as to whether J.V.'s case was ever dismissed or closed.
32. Sometime in 2007, E.G. was charged with Failure to Attend School. E.G. testified that she was sixteen (16) years old at the time the charges were filed.
33. According to E.G., during one of her many court appearances, Judge Garza told her mother to pay \$500.00 or paddle E.G. The mother chose to paddle E.G. because she did not have \$500.00.
34. According to E.G., being paddled in the courtroom was "degrading" and did not help her.
35. Although E.G.'s fine had been discharged through the paddling by her mother, E.G.'s case remained pending. The case was reset and E.G. was required to meet various conditions for compliance.
36. According to E.G. and Judge Garza, her case would only be dismissed after she reached "100% compliance."
37. On or about March 7, 2008, following the appearance wherein her mother had paddled her, E.G., who was now seventeen (17) years-old, was held in contempt of court and required to serve three (3) days in the Cameron County Jail.
38. According to E.G., she was held in contempt without a hearing, was not afforded the right to counsel, and no prosecutor was present.
39. Although E.G. was sent to jail for failure to comply with Judge Garza's orders, no written judgment, order or other court record reflecting the assessment of a fine, court costs, or the imposition of conditions of probation was provided to the Commission.

40. According to court records provided to the Commission by Judge Garza, the outstanding fine of \$500.00 assessed on February 22, 2007 against L.G., a twelve (12) year-old boy charged with disorderly conduct, was resolved on or about April 30, 2008, when L.G.'s father paddled the boy in court. The court records indicated L.G.'s father was unemployed and, therefore, could not afford to pay the fine.
41. Court records also reflected that the mother of A.V., a fourteen (14) year-old student charged on February 9, 2007 with failure to attend school, paddled A.V. at an April 21, 2008 court appearance.
42. A.V.'s parents had been charged separately for the offense of contributing to A.V.'s nonattendance, but court records indicate no action was taken against the parents in this second case.
43. Although no plea was taken at the initial appearance of A.V. and her parents on February 16, 2007, the Court Proceeding Report reflected that conditions for compliance were imposed on A.V. and the case was reset to December 6, 2007.
44. After the April 21, 2008 court appearance, at which time a plea of guilty was taken and the option of discipline was taken, A.V.'s case was reset to June 4, 2008.
45. Court records reflect that A.V.'s mother failed to appear on June 4, 2008, and that a warrant was prepared for her arrest. No evidence was provided as to whether the arrest warrant was ever executed.
46. In his testimony before the Commission, Judge Garza did not dispute the fact that parents of students who were charged with failure to attend school were provided the option of paying a fine or disciplining their child. However, the judge insisted that the option of discipline, which was understood by everyone to mean paddling, was a choice made by the parent, not an order of the court.
47. Judge Garza went on to state that in cases involving failure to attend school he routinely defers the matters without a finding of guilt in order to give the students the opportunity to turn their life around, stay in school, and eventually graduate from high school.
48. Judge Garza explained that his orders, including the imposition of any fines and/or conditions of probation, were made orally to the parents and students appearing before the court and were believed to be clearly understood by everyone.
49. Judge Garza acknowledged that he should have issued written orders or judgments in the cases filed by the School District.
50. When asked to explain his legal authority for allowing the option of paddling to parents, Judge Garza stated that Article 45.051(b)(1) of the Texas Code of Criminal Procedure authorizes the court to impose "any reasonable condition" in cases where deferred disposition is granted.
51. Although Judge Garza insisted that he never ordered a parent to paddle his/her child, he did acknowledge that any condition of deferred disposition under Article 45.051 of the Texas Code of Criminal Procedure would have to be imposed by an order of the court.
52. Although Article 45.051 also imposes a duty on the court to collect court costs up front when granting deferred disposition, Judge Garza acknowledged that he did not comply with that requirement.

53. When asked to explain the legal authority for imposing a condition on a parent to satisfy a fine or condition of probation imposed on the student for failure to attend school, Judge Garza initially directed the Commission’s attention to Section 151.001(a)(2) of the Texas Family Code, which “obligates the parents to discipline their children,” and to Section 9.61 of the Texas Penal Code, which provides a parent with a defense to prosecution if the force used against his or her child is justified as that term is defined under that Chapter.*
54. Ultimately, Judge Garza was unable to identify any legal authority that imposed a legal responsibility on the parent to satisfy the payment of a fine imposed against the student for the offense of failure to attend school or that permitted a parent to paddle a child as a condition of probation imposed against the student for the offense of failure to attend school.
55. Judge Garza did testify that a parent charged with the offense of contributing to a student’s non-attendance could be fined or required to comply with conditions of probation under Article 45.051, but acknowledged that this did not occur in any of the cases presented to the Commission.
56. Judge Garza agreed that the paddling conducted in open court was embarrassing for the students and their parents; however, it was his opinion that any lack of order or decorum in the courtroom caused by this practice was outweighed by the positive results, including reduced filings of truancy cases by the School District, to the community as a whole.
57. Judge Garza advised the Commission that the option of paddling is confined to those cases filed by the School District. He does not afford the option to parents of juveniles charged with traffic or other criminal offenses.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct provides that “[a] judge shall comply with the law... .”
2. Canon 3B(3) of the Texas Code of Judicial Conduct provides that “[a] judge shall require order and decorum in proceedings before the judge.”
3. Section 25.093 of the Texas Education Code provides that a parent may be charged with the offense of contributing to a student’s nonattendance, a Class C misdemeanor, punishable by fine only.
4. Section 25.094 of the Texas Education Code provides that a student may be charged with the offense of failure to attend school, a Class C misdemeanor.
5. Article 45.054(a) of the Texas Code of Criminal Procedure provides that in cases involving the offense of failure to attend school (Sec. 25.094, Tx. Ed. Code), the court has jurisdiction to enter an order including one or more provisions listed therein requiring compliance by the student and, in some instances, by the student and the parent.

* Section 9.62 of the Texas Penal Code provides a similar defense to School District employees, who are permitted to use reasonable force, including corporate punishment, as a form of discipline against a student under Section 22.0512 of the Texas Education Code. *See Texas Attorney General Opinion No. GA-0374*. However, according to Judge Garza’s testimony, the School District’s current policy does not permit the use of corporal punishment against a child.

6. Article 45.054(g) of the Texas Code of Criminal Procedure further provides that a disposition order under this article “may not exceed beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.”
7. Article 45.051(a) of the Texas Code of Criminal Procedure provides that “on a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the judge may,..., defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days.”
8. Article 45.050 of the Texas Code of Criminal Procedure prohibits a justice of the peace from ordering the confinement of a child for contempt of court. A “child” for purposes of this article is defined as a person who is at least 10 years of age and younger than 17 years of age and charged with or convicted of an offense over which the justice of the peace has jurisdiction.

CONCLUSION

The Commission concludes from the facts and evidence presented in this case that Judge Garza willfully and/or persistently failed to follow the law, in violation of Canon 2A of the Texas Code of Judicial Conduct, by (a) proceeding against students and their parents under the same case number even when the parents were charged separately for a different offense; (b) requiring the parents to discharge the fine assessed against the students in the failure to attend cases; (c) failing to inquire into the students’ or their parents’ ability to pay a fine or to provide them with the options of a payment plan, performing community service in satisfaction of a fine or court costs, or waiving the fine or costs after a determination of indigency; (d) failing to properly document or issue a written judgment or order of probation or deferred disposition, including conditions for compliance, in the students’ cases; (e) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in the students’ cases; (f) failing to document or issue a written order of probation or deferred disposition, including conditions for compliance, in any case filed against the parents; (g) failing to properly document or issue a written judgment or order assessing a fine, court costs, or special fee in any case filed against the parents; (h) requiring the students and their parents to return to court after the parents had discharged the fine through paddling; (i) requiring the students and their parents to return to court more than 180 days beyond the date of their first appearance in court and/or beyond the end of the school year in which the court order was entered; (j) holding E.G. in contempt of court without providing evidence of the violation of a written order or judgment of the court; (k) holding E.G. in contempt of court without affording her adequate due process, including the right to be represented by counsel; and (l) ordering the confinement of E.G., who was sixteen (16) years old when charged with the offense of failure to attend school, for contempt of an unwritten court order. In reaching this conclusion, the Commission notes that Judge Garza’s position that he never ordered the corporal punishment of students charged with failure to attend school could not be reconciled with his assertion that he had the legal authority to permit corporal punishment as a “reasonable condition” of probation under Article 45.051 of the Texas Code of Criminal Procedure.

Further, the Commission concludes that Judge Garza exceeded his authority by providing parents and the School District with a “safe haven” for the administration of corporal punishment. While acknowledging that the Legislature had not provided the courts with any legal authority to impose corporal punishment as a sanction under the Texas Education Code or

the Texas Code of Criminal Procedure, Judge Garza routinely facilitated and permitted the paddling of juveniles in his courtroom thereby clothing the practice with an improper judicial blessing. This court-sanctioned paddling, which subjected the students and their parents to public embarrassment, humiliation, fear and pain, failed to maintain proper order and decorum in the courtroom as required by Canon 3B(3) of the Texas Code of Judicial Conduct.

In condemnation of the above-recited conduct that violated Canons 2A and 3B(3) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Gustavo Garza, Justice of the Peace, Precinct 6, Place 1 in Los Fresnos, Cameron County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 9th day of March, 2009.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct





**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC No. 08-0458-JP

**PUBLIC WARNING
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE MARY D. VALADEZ
JUSTICE OF THE PEACE, PRECINCT 2
SAN DIEGO, DUVAL COUNTY, TEXAS**

During its meeting on April 14-16, 2009, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Mary D. Valadez, Justice of the Peace for Precinct 2 in San Diego, Duval County, Texas. Judge Valadez was advised by letter of the Commission's concerns and provided a written response. Judge Valadez appeared before the Commission on April 15, 2009, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Mary D. Valadez was Justice of the Peace for Precinct 2, in San Diego, Duval County, Texas.
2. On or about September 19, 2007, Maria Garcia ("Garcia") went to Judge Valadez' court seeking to evict an individual in possession of certain real property located in Precinct 2, which property Garcia and her father claimed to own.
3. Garcia was prepared to present and file a document entitled "Plaintiff's Complaint for Forcible Detainer," along with a notice to vacate.
4. Judge Valadez was aware of the history of the dispute between the Garcia families over ownership and possession of the property in question.
5. According to Garcia, Judge Valadez refused to look at or accept the complaint for forcible detainer and told Garcia to hire an attorney and file her action in district court.

6. Thereafter, Garcia approached the Duval County Attorney and the Duval County Judge for assistance.
7. According to his sworn statement, the County Attorney contacted Judge Valadez and advised her that she was obligated to allow Garcia's case to be filed.
8. According to his sworn statement, the County Judge also contacted Judge Valadez and advised her to allow Garcia to file the eviction case.
9. Judge Valadez indicated in her written response and testimony before the Commission that her memory of Garcia's appearance in her court was "vague."
10. Judge Valadez also stated that she did not recall speaking to the County Judge or County Attorney regarding Garcia's case.
11. Judge Valadez recalled, however, that she informed Garcia that her case was "never filed," after Garcia requested the judge's recusal.
12. Judge Valadez did recall advising Garcia to seek the assistance of an attorney to file the case in district court because, according to the judge, the case involved a dispute over title to the property.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall comply with the law"
2. Canon 3B(2) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge . . . shall maintain professional competence in [the law.]"
3. Canon 3B(8) of the Texas Code of Judicial Conduct states, in pertinent part: "A judge shall accord to every person who has a legal interest in a proceeding,..., the right to be heard according to law."
4. Section 24.004 of the Texas Property Code provides that "a justice court in the precinct in which the real property is located has jurisdiction in eviction suits" as well as forcible detainer actions.

CONCLUSION

The Commission finds based on the facts and evidence before it that Judge Valadez' failed to comply with the law and demonstrated a lack of professional competence in the law, in violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct, by her refusal to accept Ms. Garcia's forcible detainer action, over which Judge Valadez' court did have jurisdiction. Judge Valadez was in error when she assumed, based on her knowledge of the history of the parties' dispute over the property in question, that the action Garcia was intending to file involved a dispute over title to the property. By failing to review Garcia's paperwork and refusing to accept the filing of a forcible detainer action, Judge Valadez effectively closed her court to an individual with a legal interest in the eviction action and denied that individual the right to be heard according to law, in violation of Canon 3B(8) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC**

WARNING AND ORDER OF ADDITIONAL EDUCATION to the Honorable Mary D. Valadez, Justice of the Peace for Precinct 2 in San Diego, Duval County, Texas.

Pursuant to the order, Judge Valadez must obtain **four (4) hours** of instruction with a mentor in addition to her required judicial education. In particular, the Commission directs that Judge Valadez receive instruction in the following areas: case filing and docketing, landlord/tenant law, including suits for forcible detainer and eviction, and the applicable provisions found in the Texas Property Code.

Judge Valadez shall complete the additional **four (4) hours** of instruction recited above within **ninety (90) days** from the date of written notification of the assignment of a mentor. It is Judge Valadez' responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four (4) hours** of instruction described herein, Judge Valadez shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, § 1-a(8) of the Texas Constitution, it is ordered that the conduct described above be made the subject of a **PUBLIC WARNING AND ORDER OF ADDITIONAL EDUCATION** by the State Commission on Judicial Conduct.

The Commission takes this action in a continuing effort to protect public confidence in the judicial system, and to assist the state judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Code of Judicial Conduct.

Issued this 27th day of April, 2009.

ORIGINAL SIGNED BY

Honorable Sid Harle, Chair
State Commission on Judicial Conduct